

No. 14205

United States
Court of Appeals
for the Ninth Circuit

S. B. TRESSLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petitions to Review Decisions of The Tax Court
of the United States

FILED

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PAUL P. O'BRIEN
CLERK

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[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Petitioner:

JOSEPH A. FITZSIMMONS, Esq.

For Respondent:

F. L. VAN HAAFTEN, Esq.

R. C. WHITLEY, Esq.

The Tax Court of the United States

Docket Nos. 29044, 35129

S. B. TRESSLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

Tietjens, Judge: The respondent determined deficiencies in income tax of \$701.07 for 1946 and \$936.29 for 1947. By amended pleadings these deficiencies have been increased to \$2,239.64 and \$3,967.15, respectively.

The questions for decision involve the proper treatment of the income of rental properties in the hands of a receiver appointed by a Florida court and expenditures made by the receiver. Also involved are claimed deductions for certain legal expenses; payments made to the petitioner's wife from

the income of the receivership pursuant to court order and claimed as deductible under sections 22(k) and 23(u); the computation of capital gain on the sale of an apartment house; the allowance of depreciation on the properties in receivership; and whether the deficiency notice for 1947 was timely. A number of alternative contentions are made by both parties. No useful purpose would be served by setting out all the contentions in detail in this preliminary statement. They will be treated more fully in the opinion.

Findings of Fact

The petitioner is an individual residing in Reno, Nevada. His income tax returns for 1946 and 1947 were filed on the cash basis with the collector at Reno, Nevada. For 1947 the petitioner underestimated his tax on Form 1040-ES filed March 15, 1947, and an amended Form 1040-ES filed September 15, 1947. He filed his final return for 1947 on Form 1040 on January 12, 1948. The notice of deficiency for 1947 was dated March 14, 1951.

In August 1944 the petitioner married Ada Zoeller Tressler in Garrett County, Maryland. On their honeymoon the couple visited in Reno with the petitioner's sons Norman and Kenneth. From there they went to California and later to Florida to spend the winter.

During the early months of 1945, while married to Ada and living with her, the petitioner purchased several parcels of real estate in Broward County, Florida which included two apartment

houses known as Maxwell Court Apartments and Tarpon River Apartments. Title to the apartment houses was taken in the name of the petitioner's son, Kenneth, and title to the other properties was taken in the joint names of Ada and the petitioner. The Maxwell Court Apartments were purchased by the petitioner in January 1945 for the sum of \$45,000. They consisted of eight furnished units. The land was valued at \$3,600, furniture at \$6,000, and the buildings at \$35,400. The Tarpon River Apartments were purchased at the same time for the sum of \$22,875. The land was valued at \$2,200 and the furniture at \$5,000, and the building consisting of four furnished units was valued at \$15,675.

The petitioner owned property in addition to that described above, and the receivership hereafter mentioned did not include all his property.

On March 7, 1945, Ada filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Broward County, Florida, a "Bill for Alimony Unconnected with Divorce" naming the petitioner, his son Kenneth, and Ruth Westerberg, individually, and as agent and employee of the petitioner, as defendants. The bill prayed for "temporary and permanent support and alimony unconnected with a divorce together with suit money and a reasonable amount with which to compensate her attorneys." Further, a declaratory decree was asked adjudging that the properties purchased in the name of Kenneth were held in trust for the petitioner, that the defendants be restrained from transferring and encumbering the properties, that a writ of sequestra-

tion issue, and that a receiver be appointed to take charge of the properties, collect the rents, and pay same into court to insure the payment of any sums that may be adjudged due and payable to Ada by the petitioner.

On March 13, 1945, the Florida court entered an order appointing Ruth Westerberg receiver for the two apartment properties, restraining Kenneth and the petitioner from transferring the properties, and directing the receiver to collect the rents, pay expenses of operation, and deposit the balance of the receipts in a bank subject to further court order.

On June 28, 1945, an order was entered making an allowance of \$300 per month, retroactive to March 3, 1945, for temporary alimony and support of Ada and \$2,000 temporary attorney fees, and court costs of \$334.86. This order was appealed by Kenneth, but his appeal was denied.

On July 17, 1945, the petitioner was granted a divorce from Ada in an action begun by him May 7, 1945 in the Second Judicial District Court in Nevada. This action was uncontested by Ada. No provision for alimony was made in the decree.

In October 1945 Kenneth sought to file a further answer in the Florida proceedings in an effort to regain possession of the apartment properties and to plead therein the Nevada divorce decree. Kenneth was denied the right to file the answer. By order dated January 7, 1946, the Florida court decreed that the apartment properties purchased by the petitioner in the name of Kenneth were properties of the petitioner and held in trust for him

by Kenneth. Later in January the court ordered the receiver to pay the sum of \$5,334.86. This amount was made up of three items: (1) \$3,000 for accrued support of Ada from March 3, 1945 to January 3, 1946; (2) \$2,000 temporary attorney fees; and (3) \$334.86 costs.

An appeal from said orders was denied by the Florida Supreme Court and Kenneth took the matter to the United States Supreme Court. While that proceeding was pending, the petitioner himself began an action in a United States District Court in Florida against Ada, the receiver, et al., seeking recovery of his apartment properties held in receivership. A motion to dismiss was granted and an appeal was taken. While this appeal was pending and after the United States Supreme Court had denied certiorari in Kenneth's case the parties entered into a settlement agreement under which Ada acquired the Tarpon River Apartments and other properties and the petitioner retained the Maxwell Court Apartments. In accordance with the settlement agreement all the litigation above described was terminated and a decree was entered by the Florida court to the effect that the various court orders be marked satisfied and the properties be released from the receivership.

On August 31, 1947, the petitioner sold the Maxwell Court Apartments for \$59,000.

A summary of the income and disposition of the rents collected, expenses paid, and disposition of the remaining funds by years by the receiver is shown in the following schedule:

	1945	1946	1947	Total
Rents collected.....	\$7,393.50	\$11,092.95	\$2,410.00	\$20,896.45
Expenses paid.....	2,992.91	3,199.48	2,269.50	8,461.89
Income after maintenance expenses.....	<u>\$4,400.59</u>	<u>\$ 7,893.47</u>	<u>\$ 140.50</u>	<u>\$12,434.56</u>
Other payments by receiver:				
Ada Tressler.....		\$ 3,000.00	\$ 984.69	\$ 3,984.69
Davis & Lockhart, Attorney for Ada Tressler		2,000.00	2,862.55*	5,197.41
Ruth Westerberg, Receiver.....			1,559.46	1,559.46
Hugh Lester, Attorney for Receiver.....			1,500.00	1,500.00
Court Costs.....		334.86	193.00	193.00
Total other payments by receiver.....		<u>\$ 5,334.86</u>	<u>\$7,099.70</u>	<u>\$12,434.56</u>
Amount retained by receiver.....	\$4,400.59	\$ 2,558.61		

* This amount according to the court's order was for expenses and attorney fees "for services rendered to the Receiver, in all Federal Courts."

In connection with the litigation in the Florida and the United States Courts, the petitioner bore the expense of the legal representation for Kenneth and himself. For the year 1946 he claimed on his return a deduction of \$1,425 for legal expenses and attorneys fees. By amended pleadings he now claims \$5,500. For 1947 he claimed a deduction of \$5,035 for such expenses. By amended pleadings he now claims \$6,535.

The respondent determined a deficiency of \$701.07 for 1946 based on disallowance of claimed legal expenses of \$1,425 and depreciation of \$1,931.25. By amended answer the respondent increased the deficiency for 1946 to \$2,239.64 based

on his contention that the petitioner realized additional income by reason of the payment of \$5,334.86 made by the receiver to Ada under the January 17, 1946, order of the Florida court for support, attorney fees, and court costs.

The respondent determined a deficiency of \$936.29 for 1947 as a result of the disallowance of the claimed deduction of \$5,035 for attorney fees and an error of \$1,000 (admitted by the petitioner) in computing net income. By amended answer this deficiency was increased to \$3,967.15 partly based on the contention that the petitioner realized additional income by reason of payments amounting to \$7,099.70 made by the receiver under final decree of the Florida court dated July 16, 1947. The increase also was occasioned by disallowance of \$2,517.50 legal expenses which were added by the respondent to the cost of the Maxwell Court Apartments in computing the capital gain arising from the sale thereof. Another portion of the increase resulted from increasing the capital gain by offsetting depreciation for 1946 on the apartments in the sum of \$1,246.

Opinion

Taxability to the Petitioner of Payments Made Under Court Order by Receiver

On brief the respondent argues that the following amounts paid by the receiver of the apartment properties under court order from the rental receipts thereof should be added to the petitioner's income:

	1946	1947
Ada Tressler	\$3,000.00	\$ 984.69
Attorneys for Ada Tressler.....	2,000.00	2,862.55
Attorneys for Receiver.....		1,500.00
Receiver's Fee		1,559.46
Court Costs	334.86	193.00
	<hr/>	<hr/>
Totals.....	\$5,334.86	\$7,099.70

With regard to the \$5,334.86 paid in 1946 we think the respondent is correct. Of this amount, \$3,000 represented accrued temporary alimony and support for the petitioner's wife, Ada; \$2,000 was for temporary fees awarded her attorneys, and the remainder went for court costs. These items all represent obligations imposed on the petitioner by the Florida court. These obligations were satisfied in 1946 by the application of funds derived from rentals from properties found by the Florida court to belong to the petitioner. They were personal obligations of his unconnected with the operation of the properties by the receiver. The petitioner was on a cash basis and no argument can be made that 1946 was not the proper year in which to tax him. It was then that he received the benefit of the funds under court order through discharge of his obligations to Ada arising out of her action against him. That he had no actual control of the funds and did not receive cash in hand is of no consequence.

We see the situation for 1947 somewhat differently. The \$984.69 paid to Ada and the \$193 court costs fall into the same categories as the 1946 payments and should properly be added to the petitioner's income in 1947. Not so the \$2,862.55 which

the respondent treats as a payment to Ada's attorneys. An examination of the facts show that the Florida court ordered this amount paid to the attorneys in question not for services rendered to Ada in her attempt to collect support from the petitioner—rather, the payment was made, in the words of the court, "for services rendered to the Receiver, in all Federal Courts." This amount, then, went to attorneys who, while nominally in Ada's employ, were nevertheless instrumental in protecting the receivership itself from attack. That was a receivership expense and so far as we can see, should be so treated. We see no reason for sustaining the respondent in attempting to tax the petitioner with the \$2,862.55 paid to attorneys for services rendered the receivership. The same can be said for the \$1,500 paid to the attorney for the receiver. That, too, was a receivership expense and the petitioner should not be taxed with it. Like treatment should be accorded the receiver's fees.

The effect of our holding is that the petitioner is to be taxed only on the net income of the properties held by the receiver and then only in the year in which that income was applied for his benefit. Cf. *North American Oil Consolidated vs. Burnet*, 286 U.S. 417. Costs of the receiver in operating the receivership are not to be added to the petitioner's income.

The petitioner's contention that it was the duty of the receiver to file returns and pay tax on the income of the apartment properties requires no discussion. The properties in receivership consti-

tuted only a part of the property owned by the petitioner and such a receiver is under no obligation to file a return. Section 142(a), Internal Revenue Code; Reg. 111, 29.142-4; *North American Oil Consolidated vs. Burnet*, supra.

The petitioner's further contention, that the amounts paid to Ada are deductible by the petitioner under sections 22(k) and 23(u), is without merit. In order for the payments to be deductible this Court has said, in *Charles L. Brown*, 7 T.C. 715, 716:

The wife must be "divorced or legally separated from her husband under a decree of divorce or of separate maintenance." The payments in question must have been "received subsequent to such decree." And they must discharge an obligation "under such decree or under a written instrument incident to such divorce or separation." (Emphasis in each case added.) Even in the last quotation use of the word "such" to define "separation" demonstrates that what was meant was not any legal separation, as petitioner contends, but only one of a sort to which reference has already been made in the prior language, that is, a separation consummated "under a decree * * * of separate maintenance." See *Frank J. Kalchthaler*, 7 T.C. 625.

The payments before us were made pursuant to orders of the Florida court in a suit entitled a "Bill for Alimony Unconnected with Divorce." They were denominated as "temporary alimony and support" by the court in its orders. So far as we

can ascertain there never was entered in this litigation a "decree of separate maintenance" as required by section 22(k). We think such payments should receive the same treatment as payments of alimony pendente lite or payments made between the entry of an interlocutory decree and the time the decree became final. In neither case are such payments deductible. *Joseph A. Fields*, 14 T.C. 1202, *affd.* 189 F. 2d 950; *Alice Humphreys Evans*, 19 T.C... (No. 126). The Nevada divorce secured by the petitioner is of no significance on this issue. The payments were tied in with the Florida litigation alone and had no relation to the Nevada divorce which made no provision whatever for alimony or support. As a matter of fact the Florida courts resisted all of the petitioner's efforts to inject the Nevada divorce into the Florida proceedings.

Deductibility of Claimed Legal Expenses

The amount of legal fees claimed as a deduction is not too clear for 1946, but we think it is limited by the pleadings to \$5,500. For 1947, \$5,035 is claimed. The petitioner's contention with respect to these amounts is "that he is entitled to deduct the attorneys fees and legal expenses incurred in attempting to protect and recover possession of his business income producing properties." No sections of the Code are cited, nor are we referred to any cases by the petitioner and we do not know whether he relies on section 23(a)(1)A or section 23(a)(2). No matter, for we think the petitioner must fail under either.

Title to the properties was originally taken in the name of the petitioner's son, Kenneth, and when Ada began her suit for support she asked that a receiver be appointed to operate the apartments to insure the payment of any sums that might be found due her. She also asked the court to find that Kenneth held the properties in trust for the petitioner. Counsel were thereupon employed both for Kenneth and the petitioner in an attempt to sustain Kenneth's ownership of the apartments and the petitioner bore the entire cost of such representation. After the court found that Kenneth was holding the properties not for himself, but for the petitioner, the petitioner began an action in his own name in the federal courts. In that proceeding additional legal expenses were incurred.

With reference to the fees paid by the petitioner on behalf of Kenneth we do not perceive any theory which would justify their deduction by the petitioner. He was no more than a volunteer in that respect.

As to the petitioner's own legal expenses we think the principles of such cases as *Lindsay C. Howard*, 16 T.C. 157, *affd.* (C.A. 9, February 11, 1953) . . . F.2d . . . ; *Thorne Donnelley*, 16 T.C. 1196; and *Andrew Jergens*, 17 T.C. 806 preclude their allowance as a deduction. All of those cases involved the deductibility of legal expenses arising out of disputes between husband and wife over property settlements or alimony payments. All held the expenses to be nondeductible. The genesis of the litigation here is just such a dispute as was involved in those

cases. There is one difference in the factual situation. Here, a receiver was appointed for part of the petitioner's properties as an incident of the litigation to insure payment of whatever might be found due to Ada from the petitioner for support, attorney fees, etc. We do not think that should change the result. The core of the litigation was not the receivership, but the obligation of the petitioner to support his wife. If that obligation was frustrated the receivership would fall. The legal expenses were incurred primarily to defeat the wife's suit and not to protect the petitioner's property. At one stage of the proceeding the petitioner was actually disclaiming ownership in favor of his son Kenneth.

In *Thorne Donnelley*, *supra*, a somewhat similar argument to that made here was advanced, though it is true that a sequestration of the petitioner's property was merely threatened there and not actually ordered. This Court said "that the contention that the expenditures for fees and costs represent the ordinary and necessary expenses of preserving and maintaining property held for the production of income because of resistance against enforcement of a personal obligation to pay alimony 'leaves us unmoved'." We hold that the petitioner is not entitled to deduct the claimed legal expenses and costs. He cites not a single case to support his contrary contention.

The petitioner claims, in the alternative, that the legal fees and expenses should be added to the cost of the Maxwell Court Apartments since they were expenditures made in defense of title, thus reduc-

ing his capital gain on the sale. The answer to this is that they were not such expenditures. Title to the property was never in dispute, except by the petitioner himself. As pointed out above, the expenses were primarily incurred in attempting to defeat Ada's claim for support.

Depreciation

In the notice of deficiency for 1946 the respondent disallowed a depreciation claim in the amount of \$1,931.25 for the reason that the petitioner did not report any of the income from the property placed in receivership for that year. Since we have held that the petitioner was properly taxable on income from the receivership properties in 1946, we also hold that the claimed depreciation should have been allowed. We do not understand that the respondent contests this result.

The petitioner in his amended pleadings has increased this claim to \$3,020. The record contains no evidence on which we could reasonably make any finding on this issue and the increased claim is disallowed.

Timeliness of 1947 Deficiency Notice

The petitioner filed his return for 1947 on Form 1040 prior to January 15, 1948, thus eliminating the necessity of a final declaration of estimated tax in accordance with the provisions of section 58(d)(3). Since the last day prescribed by law for filing this declaration was January 15, 1948, the petitioner contends that the period of limitation

with respect to the 1947 deficiency expired three years thereafter, or January 15, 1951. The notice of deficiency for 1947 was dated March 14, 1951. We cannot agree with the petitioner.

Section 53 requires returns to be filed on or before March 15 following the close of the calendar year. Under the conditions prescribed in section 58(d)(3), a return filed on or before January 15 shall be considered a declaration of estimated tax. Section 58(d)(3) does not require a return to be filed before January 15. It simply gives the taxpayer an option to file before that date and if he does, then the return is treated as a declaration or amended declaration of estimated tax. It is a convenience to the taxpayer and we do not think it has anything to do with starting the three-year limitation provided for in section 275. That period started on March 15, 1948, and the deficiency notice dated March 14, 1951, was timely. *Harry B. Sidles*, 19 T.C. . . (No. 128).

The petitioner raises one other point. He claims that he overpaid his 1945 taxes and asks the Court to take this into consideration in computing possible deficiencies in this case. But that is a matter properly for administrative settlement or adjustment between the parties. The year 1945 is not before us and we make no determination on this point.

Decision will be entered under Rule 50.

Entered March 31, 1953.

[Endorsed]: T.C.U.S. Received March 26, 1953.

The Tax Court of the United States
Washington

Docket No. 29044

S. B. TRESSLER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its memorandum Findings of Fact and Opinion entered March 31, 1953, the respondent having duly filed a proposed computation in accordance therewith and the petitioner having failed, after due notice, to file a counter proposed computation or to object at the hearing on September 9, 1953, to the computation as made by the respondent, it is hereby

Ordered and Decided: That there is a deficiency in income tax of \$1,616.80 for the taxable year 1946.

[Seal] /s/ NORMAN O. TIETJENS,
 Judge

Entered: September 17, 1953.

Served: September 18, 1953.

The Tax Court of the United States
Washington

Docket No. 35129

S. B. TRESSLER, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion entered March 31, 1953, the respondent having duly filed a proposed computation in accordance therewith and the petitioner having failed, after due notice, to file a counter proposed computation or to object at the hearing on September 9, 1953, to the computation as made by the respondent, it is hereby

Ordered and Decided: That there is a deficiency in income tax of \$2,049.68 for the taxable year 1947.

[Seal] /s/ NORMAN O. TIETJENS,
 Judge.

Entered: September 17, 1953.

Served: September 17, 1953.

[Title of Tax Court and Causes 29044-35129.]

TRANSCRIPT OF PROCEEDINGS

Civil Court Record Courtroom, Sixth Floor, Dade County Court House, Miami, Florida, Wednesday, April 16, 1952, 2:00 p.m.

Before: Honorable N. O. Tietjens, Judge.

Appearances: J. A. Fitzsimmons, Esq., appearing for the Petitioner: Francis L. Van Haaften, Esq., (Honorable Mason B. Leming), Acting Chief Counsel, Bureau of Internal Revenue, appearing for the Respondent.

* * * * *

S. B. TRESSLER

the petitioner herein, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name and address for the record, please.

The Witness: S. B. Tressler. I am claiming Reno, Nevada, as my address.

Direct Examination

Q. (By Mr. Fitzsimmons): Were you ever at any time a resident of the State of Florida, Mr. Tressler? A. No.

Q. In connection with your 1946 income tax return, the respondent has denied or disallowed your claim for attorney's fees made during that year. Did you at any time in 1946 pay any attor-

(Testimony of S. B. Tressler.)

ney's fees in connection with any litigation in the State of Florida?

A. I can't remember whether it was '46 or '47. I paid attorney's fees to W. T. George of Philippi, West Virginia.

Q. In what manner and what amounts were those payments made to Mr. George?

A. The first amount was paid, \$200, that was paid in cash.

Q. Approximately when and under what circumstances was that payment made to W. T. George?

A. It was paid to him to come down here and check over the situation in regard to the litigation and the court's ruling on property that I bought for my son.

Q. What is your son's name?

A. Kenneth Tressler.

Q. Did you make any other payments to Mr. W. T. George in connection with that Florida litigation in which your son Kenneth Tressler was involved with you? A. \$700.

Q. I hand you, Mr. Tressler, a check on the Security National Bank, bearing date of February 12, 1946, payable to W. T. George, in the amount of \$700, bearing the maker's signature, S. B. Tressler, and ask you to examine that document and state whether or not that is a cancelled check for the payment of which you have just testified, to Mr. W. T. George? [Handing document to witness.]

A. Yes, sir, that is the check.

(Testimony of S. B. Tressler.)

Q. In what connection, or in what litigation was that payment made to Mr. George, if you recall?

A. I just don't understand your question, Mr. Fitzsimmons. It was made to come down here and try to protect my interests after the court had ruled that that property was mine. That is about the best answer I can make on it.

Q. Did Mr. George represent you in any litigation commenced in any court in the State of Florida?

A. Just what I have spoken of, to try to recover this property.

Q. Did you employ any other attorneys other than Mr. W. T. George in connection with litigation on your behalf in the State of Florida?

A. I think Mr. George did.

Q. Was that with your knowledge and approval? A. Yes, sir.

Mr. Fitzsimmons: At this time the petitioner offers in evidence check bearing date of February 12, 1946, payable to W. T. George, in the sum of \$700 bearing cancellation stamps and endorsement thereon, as Petitioner's Exhibit No. 1 in evidence.

The Court: Any objection, Mr. Van Haaften?

Mr. Van Haaften: No objection.

The Court: It will be admitted.

The Clerk: Petitioner's Exhibit No. 1.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 1.)

Q. Mr. Tressler, in connection with the litiga-

(Testimony of S. B. Tressler.)

tion in which he was employed, was an appeal taken in that case to your knowledge?

A. To the best of my knowledge, there was.

Q. Was it necessary to print the record in that cause, do you know? A. It was.

Q. I hand you herewith printed transcript of the record in the United States Circuit Court of Appeals for the fifth circuit, wherein Shriver B. Tressler and Kenneth Tressler are named as appellant and cross-appellant, and Ada Zoeller Tressler and Ruth Westerberg as receiver, appellees. Was that litigation which Mr. George was employed in as your attorney?

A. That is.

Q. I hand you herewith, Mr. Tressler, check bearing date September 21, 1946, drawn on the Second National Bank of Uniontown, payable to W. T. George, in the sum of \$525, signed by S. B. Tressler, and bearing a notation thereon "for printing record and costs in the Supreme Court appeal," bearing endorsement on the reverse side thereof of W. T. George, I ask you to examine that check and state whether or not that payment was made to Mr. W. T. George in connection with the appeal and the preparation of the transcript of record in the circuit court of appeals, fifth circuit?

A. It was.

Mr. Fitzsimmons: At this time the petitioner offers in evidence the cancelled check bearing date of September 21, 1946, drawn on the Second National Bank, payable to W. T. George in the sum of

(Testimony of S. B. Tressler.)

\$525 bearing notation "for printing of records" I offer it as petitioner's Exhibit No. 2.

Mr. Van Haaften: No objection.

The Court: It will be admitted.

The Clerk: Petitioner's Exhibit No. 2.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 2.)

Mr. Fitzsimmons: At this time the petitioner offers in evidence the transcript of record, the printed copy of the transcript of record in the United States Circuit Court of Appeals for the fifth circuit, No. 11778, Shriver B. Tressler and Kenneth Tressler, appellant and cross-appellant respectively versus Ada Zoeller Tressler and Ruth Westerberg, as receiver appellees, the said transcript bearing the file stamp of the Clerk of the United States District Court, Oakley P. Dood, dated April 21, 1946.

Mr. Van Haaften: No objection.

The Court: Is the purpose to show the nature of the controversy?

Mr. Fitzsimmons: Yes, Your Honor, and that was the purpose of attempting to recover his property from the state courts.

The Clerk: Petitioner's Exhibit No. 3.

(The document referred to was received in evidence and marked Petitioner's Exhibit No. 3.)

Q. Mr. Tressler, I believe you previously testi-

(Testimony of S. B. Tressler.)

fied you were never a resident of the State of Florida? A. That's right.

Q. When and where were you and Ada Zoeller Tressler married?

A. Garret County, Maryland.

Q. When?

A. I believe it was—I thought it was August 19, but I believe somebody stated August 17, and I think August 17 is correct.

Q. Of what year? A. 1944.

Q. How long were you and Ada Zoeller Tressler married? A. About five months.

Q. After your marriage, where did you go to reside?

A. We started out honeymooning, if you would call it that—we went to Reno, Nevada, I had two boys there, and Ada's sister was trying to hook one of my sons, she wanted to go. Of course, she went with us.

Q. She went on your honeymoon?

A. All the time.

Q. How long did you stay in Nevada?

A. I can't recall that.

Q. Approximately.

A. Approximately thirty days.

Q. Then where did you go?

A. We went on through California.

Q. Where did you go to sojourn for the winter of 1944-1945?

A. We arrived over in St. Petersburg, I believe it was in November, maybe December.

(Testimony of S. B. Tressler.)

Q. Can you refresh your recollection on that?

A. No, I can't.

Q. When you came to the State of Florida, did you come with any intention of making Florida your home?

A. I didn't have no intentions, we were just out honeymooning. We stayed in St. Petersburg for, I believe, thirty-two days.

Q. Then where did you go?

A. Then we come over on the east coast.

Q. After you arrived on the east coast, where did you stay?

A. It was called the Venetian Apartments, Fort Lauderdale.

Q. Did you rent it or purchase it, or rent it for a year, or for a long term or for a short term?

A. I rented it for a month.

Q. Did you, during your sojourn in Fort Lauderdale, Florida, purchase any property in Fort Lauderdale? A. Yes, sir.

Q. Describe the property or properties, if any, you purchased, and approximately when?

A. I first purchased the Maxwell Court Apartments.

Q. For whom, if anyone, did you purchase the Maxwell Court Apartments?

A. My youngest son—not youngest son, my son Kenneth.

Q. For what purpose, Mr. Tressler?

A. So he would have an income. He blacked out during maneuvers in the army, he was in the hos-

(Testimony of S. B. Tressler.)

pital for a long time and was medically discharged, and he wasn't capable, I didn't think, of going along and making a living.

Q. Did your wife, Ada Tressler, know of this purchase for your son?

A. She did, and agreed with it very much because Kenneth and her sister was going to be married.

Q. What other property, if any, did you purchase in Fort Lauderdale during your sojourn there?

A. I purchased six lots on No. 1 highway. I purchased two lots, I believe they were on 19th Street, I'm not sure.

Q. In whose names were those lots purchased?

A. In Kenneth's name.

Q. Did Mrs. Ada Zoeller Tressler know of the purchase of those vacant lots?

A. She did, and I purchased one lot on an island. That was in her and my name jointly, we were going to build a home there to live in.

Q. When?

A. Well, just as soon as we got straightened up.

Q. Was that during the war? A. Yes.

Q. Was it possible to build homes at that time?

A. Well, yes and no, they were being built and they were being rejected.

Q. What other properties, if any, were purchased by you?

A. Tarpon River Apartments.

Q. From whom was that purchased?

(Testimony of S. B. Tressler.)

A. Mrs. Westerberg.

Q. Did Ada Zoeller Tressler know of the purchase of the Tarpon River Apartments from Mrs. Westerberg? A. Yes, sir.

Q. In whose name was the purchase of the Tarpon River Apartments made?

A. In Kenneth's name.

Q. Did Mrs. Ada Tressler know that that apartment was taken in his name?

A. Yes, sir, she was with me.

Q. Now, Mr. Tressler, would you state please the cost of the Maxwell Court Apartments and what it consisted of?

A. It consisted of eight units; to the best of my knowledge it was \$45,000.

Q. From whom was it purchased?

A. Through a real estate man from people by the name of Maxwell.

Q. Was the property furnished or unfurnished?

A. Furnished.

Q. What was the value of the furniture, if you know, at the time you purchased it, approximately?

A. I would say about \$6,000.

Q. What was the value of the land upon which the buildings were located?

A. Lots in that district—I got a price on a lot right adjoining—to the best of my knowledge it was \$1200.

Q. How many lots were involved in the land area purchased with the Maxwell Apartments?

A. Three.

(Testimony of S. B. Tressler.)

Q. With regard to the Tarpon River Apartments, what was the purchase price of that property? A. I think it was \$22,875.

Q. Was that property furnished?

A. Yes, sir.

Q. Was it purchased furnished?

A. Yes, sir.

Q. What was the value of the furniture in the building of the Tarpon River Apartments?

A. Well, it was furnished pretty nice. I would say \$5,000.

Q. What was the value of the land upon which the building was constructed or that were acquired in that purchase?

A. It was in a much better district, \$2200.

Q. How many lots were there in the Tarpon River purchase?

A. I think it was only one.

Q. How many units, rental units, were there in the Tarpon River Apartments? A. Four.

Q. After arrangements were made for the purchase of these properties—strike that. Would you say, please, Mr. Tressler, the cost of the six lots that you testified you purchased on Federal Highway? A. \$14,000.

Q. What was the cost of the two lots that were purchased by you, you mentioned? A. \$1300.

Q. What was the cost of the lot on the island that you purchased, the lot on the island?

A. \$4500.

(Testimony of S. B. Tressler.)

Q. Was that the lot you testified was taken in the names of yourself and Ada Tressler jointly?

A. That's right.

Q. Of what state were you a resident at the time of your marriage to Ada Zoeller Tressler?

A. My last place I registered and voted was West Virginia.

Q. Was that in 1944?

A. No, I believe it was 1942.

Q. Were you engaged for several years in any business in the State of West Virginia immediately prior to your marriage to Ada Zoeller Tressler?

A. Coal business.

Q. How long were you engaged in that business in West Virginia prior to your marriage to Ada Zoeller Tressler?

A. Eleven years.

* * * * *

Mr. Fitzsimmons: At this time petitioner asks leave to have the Court note as petitioner's Exhibit No. 9 statute No. 65.10 of the Florida Statutes Annotated, titled "Alimony unconnected with causes of divorce" and the substance of such statute appearing in volume 5 of the Florida Statutes Annotated, by West Publishing Company at page 612 and at page 613 of the Florida Statutes Annotated—we offer that as petitioner's Exhibit No. 9.

Mr. Van Haaften: Your Honor—

The Court: I think I am entitled to take judicial notice of this.

Mr. Van Haaften: If your Honor please, I was going to suggest, I understand the Tax Court takes

judicial notice of all the statutes of the several states in which they operate.

The Court: That is my understanding.

Mr. Van Haaften: In addition to this, you will take judicial notice of any other statutes in this state that might be pertinent.

The Court: If drawn to my attention by counsel.

* * * * *

[Endorsed]: T.C.U.S. Filed June 10, 1952.

PETITIONER'S EXHIBIT No. 9

In the Circuit Court of the Fifteenth Judicial Circuit in and for Broward County, Florida

In Chancery No. 10760

ADA A. TRESSLER, Plaintiff,

vs.

SHRIVER B. TRESSLER, et al., Defendants.

ORDER

This cause came on to be heard upon the Plaintiff's motion for the entry of an order in favor of Plaintiff, Ada A. Tressler, for temporary alimony and support, costs and attorney's fees, quasi in rem, against the Defendant, Shriver B. Tressler, and all of the property set out and described in Plaintiff's bill of complaint, and the amendments thereto, and the returns and profits therefrom, situate and located in Broward County, Florida,

Petitioner's Exhibit No. 9—(Continued)
and within the jurisdiction of this court, subject to any right, title or interest of Defendant, Kenneth Tressler, that may be had in and to said property, or any part thereof, or may be decreed by this court, and the court being fully advised in the premises, it is,

Ordered, Adjudged, and Decreed as follows:

1.

That this is a suit by Plaintiff, Ada A. Tressler, against the Defendant, Shriver B. Tressler, for alimony, support, costs and attorney's fees, and is a suit in rem as to all of the property set out and described in Plaintiff's bill of complaint and the amendments thereto, including the rents and profits therefrom, located in Broward County, Florida;

2.

That this court has jurisdiction of the subject matter of this suit and the property set out and described in Plaintiff's bill of complaint and the amendments thereto, including the rents and profits therefrom located in Broward County, Florida;

3.

That the Defendant, Shriver B. Tressler, has been duly and regularly served with process by publication, and a decree pro confesso duly and regularly rendered against him on the 5th day of June A. D. 1945, which said decree pro confesso is here ratified and confirmed by this Court; that the plaintiff, Ada A. Tressler, is the wife of the de-

Petitioner's Exhibit No. 9—(Continued)

pendant, Shriver B. Tressler, and is entitled to alimony, support, costs and attorney's fees, and temporary alimony and support, costs and attorney's fees, are here fixed by this Court in the following amounts, to-wit:

(a) The sum of Three Hundred (\$300.00) Dollars per month from March 3, 1945.

(b) All the costs of this cause to this date, consisting of the following items, to-wit:

To: Ted Cabot, Clerk of this Court, paid by Davis & Lockhart	\$ 16.00
To: W. R. Clark, Sheriff of Broward County, paid by Davis & Lockhart	12.10
To: J. W. Coleman, Court Reporter, paid by Davis & Lockhart	143.45
To: Ft. Lauderdale Daily News, for advertising, paid by Davis & Lockhart.....	26.36
Certified copies of divorce proceedings, Shriver B. Tressler vs. Ada A. Tressler, paid by Davis & Lockhart	10.00
To: William C. Howard, Clerk of the U. S. District Court, copies of proceedings United States vs. Shriver B. Tressler, paid by Davis & Lockhart.....	1.40
For Intangible tax, \$82.00; State tax, \$41.00, recording fee, \$2.55, paid by Davis & Lockhart for recording Mortgage Deed securing note of \$41,000.00.....	125.55
<hr/>	
Total amount paid by Davis & Lockhart, to date.....	\$ 334.86

(c) The sum of \$2,000.00 as temporary attorney's fees to enable plaintiff to compensate her attorneys herein, Davis & Lockhart, and her obligation to associate counsel incurred by the said Davis & Lockhart by plaintiff's consent on behalf of plaintiff and that all of said foregoing amounts are here

Petitioner's Exhibit No. 9—(Continued)

decreed to be a lien upon all the right, title and interest of Defendant, Shriver B. Tressler, if any, in and to the property set out and described in Plaintiff's bill of complaint and the amendments thereto, and the rents and profits derived therefrom, to which bill and amendments, reference is here had for description, located in Broward County, Florida, subject to any right, title or interest of Defendant, Kenneth Tressler, if any, that may be hereafter shown to exist, or decreed by this court, and jurisdiction is here retained by this court for the purpose of enforcing said lien and the collection of the amount of temporary alimony and support, costs and attorney's fees, herein adjudged and allowed until after the adjudication by this court of the status of ownership, legal and beneficial, of all the property in Broward County, Florida, set out and described in Plaintiff's bill of complaint and the amendments thereto, including the \$41,000.00 note executed by Kenneth Tressler to the Defendant, Shriver B. Tressler, and the mortgage deed to secure same;

4.

The receiver, Ruth Westerberg, is hereby directed to take charge of all of the property in Broward County, Florida, described in Plaintiff's bill of complaint and the amendments thereto, including the note dated January 29, 1945 in the sum of \$41,000.00, executed by Defendant, Kenneth Tressler, payable to the order of Shriver B. Tressler and secured by mortgage deed on Lots 1, 2, 3 of

Petitioner's Exhibit No. 9—(Continued)

Block 30, North Lauderdale, as recorded in plat book 1 at page 182 of the Dade County, Florida public records, and the clerk of this court is hereby directed to deliver said note and mortgage deed to the receiver herein, Ruth Westerberg, and said receiver will keep and retain said note and mortgage deed in her possession, as well as all of the other property in Broward County, Florida set out and described in Plaintiff's bill of complaint and the amendments thereto until the further order of this court, and will collect the interest on said \$41,000.00 note when due and payable and deposit same to her credit as receiver, to be held until further order of this court, and said Shriver B. Tressler is hereby enjoined from collecting said note, or any part thereof, or the interest thereon, and the said Defendant, Kenneth Tressler, is hereby enjoined from paying said note or any part thereof, or the interest thereon, to the Defendant, Shriver B. Tressler, or any other person except Ruth Westerberg, the receiver herein, or as may be hereinafter directed by this court;

5.

The receiver herein will continue to collect the rents from the property in her hands as such receiver and pay the necessary bills and expenses as heretofore directed by this court, and

6.

Jurisdiction of all other questions, matters and

Petitioner's Exhibit No. 9—(Continued)
things involved in this suit not herein specifically
decreed, are hereby retained by this court.

Done and Ordered at Ft. Lauderdale, Broward
County, Florida, on the 28th day of June A.D.
1945.

/s/ GEORGE W. TEDDER,
Judge

State of Florida, Broward County: This instru-
ment filed for record 29th day of June, 1945, and
recorded Chancery Order Book 124, page 280.
Record verified. [Seal] Ted Cabot, Clerk; signed
by Zenda Alexander, D. C.

Certification attached.

Admitted in Evidence April 16, 1952.

[Title of Tax Court and Causes 29044 and 35129.]

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached proposed computations are sub-
mitted, on behalf of the respondent, in compliance
with the Court's opinion determining the issues in
this proceeding.

This computation is submitted in accordance with
the opinion of the Court, without prejudice to the
respondent's right to contest the correctness of the

decision entered herein by the Court, pursuant to the statutes in such cases made and provided.

Said computations provide that there are deficiencies in income tax for the taxable years ended December 31, 1946 and December 31, 1947, in the amounts of \$1,616.80 and \$2,049.68, respectively.

/s/ KENNETH W. GEMMILL,
Acting Chief Counsel, Internal
Revenue Service

Of Counsel:

William H. Loeb, Regional Counsel
F. L. Van Haaften, Acting Appellate Counsel
D. Z. Cauble, Jr., Special Attorney, Internal
Revenue Service.

Computation for Entry of Decision

ARC-Ap:ATL—Atl:MDE:LTB

In re: S. B. Tressler, c/o General Delivery, Reno, Nevada.
Docket No. 29044.

Tax Liability for the Year Ended Dec. 31, 1946 Income Tax

Year	Correct Liability	Liability Per Return	Deficiency
1946.....	\$1,854.80	\$238.00	\$1,616.80

A recomputation of petitioner's income tax liability for the year ended December 31, 1946 has been prepared in accordance with the Memorandum Opinion of The Tax Court of the United States entered March 31, 1953.

Net Income

Net income as shown in statutory notice of deficiency dated March 14, 1950.....	\$ 7,571.13
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Addition: (a) Rental income.....	5,334.86
Total.....	<u>\$12,905.99</u>
Deduction: (b) Depreciation allowed.....	1,931.25
Net income as adjusted.....	<u>\$10,974.74</u>

Explanation of Adjustments

(a) The Tax Court of the United States in its Memorandum Opinion has held that the following amounts, totaling \$5,334.86, paid in 1946 by the receiver of apartment properties under court order from the rental receipts thereof represent taxable income to the petitioner, and adjustment is made herein to increase petitioner's net income by said amounts.

Accrued temporary alimony to Ada Tressler.....	\$3,000.00
Attorney fees for Ada Tressler.....	2,000.00
Court costs	334.86
Total.....	<u>\$5,334.86</u>

(b) The Tax Court has held that inasmuch as the petitioner was properly taxable on income from the receivership properties in 1946, the depreciation claimed by the petitioner on this property should be allowed. Therefore, depreciation claimed on the return in the amount of \$1,931.25 which was disallowed in the notice of deficiency has been allowed and income decreased accordingly.

Computation of Tax

Net income as adjusted	\$10,974.74
Less: Exemptions	3,000.00
Income subject to normal tax and surtax.....	<u>\$ 7,974.74</u>
Tentative normal tax and surtax on \$7,974.74.....	\$ 1,952.42
Less: 5% of \$1,952.42.....	97.62
Correct income tax liability.....	<u>\$ 1,854.80</u>
Income tax liability disclosed by return.....	238.00
Deficiency in income tax.....	<u>\$ 1,616.80</u>

Note: The overpayment of \$335.25 for the year 1945 has been allowed by the District Director of Internal Revenue for the Dis-

tract of Nevada as a credit against the 1946 and 1947 tax liabilities, as follows:

Portion of overpayment allowed in 1946.....	\$238.00
Portion of overpayment allowed in 1947.....	97.25

Total credit allowed.....	\$335.25

Computation for Entry of Decision

ARC-Ap:ATL—Atl:MDE:LTB

In re: S. B. Tressler, c/o General Delivery, Reno, Nevada.
Docket No. 35129

Tax Liability for the Year Ended Dec. 31, 1947

Income Tax

Year	Correct Liability	Liability Per Return	Deficiency
1947.....	\$3,465.01	\$1,415.33	\$2,049.68

A recomputation of petitioner's income tax liability for the year ended December 31, 1947 has been prepared in accordance with the Memorandum Opinion of The Tax Court of the United States entered March 31, 1953.

Net Income

Net income as shown in statutory notice of deficiency dated March 13, 1951.....	\$12,515.86
Additions:	
(a) Rental income	\$1,177.69
(b) Long-term capital gain increased.....	1,881.76 3,059.45

Net income as adjusted.....	\$15,575.31

Explanation of Adjustments

(a) The Tax Court of the United States has held that the following amounts, totaling \$1,177.69, paid in 1947 by the receiver of apartment properties under court order from the rental receipts thereof represent taxable income to the petitioner and adjustment is made herein to increase petitioner's net income by said amounts.

Temporary alimony paid to Ada Tressler.....	\$ 984.69
Court costs	193.00

Total.....	\$1,177.69

(b) The capital gain on sale of the Maxwell Court Apartments has been increased in the amount of \$1,881.76 in accordance with the Memorandum Opinion of the Tax Court, computed as follows:

Selling price of Maxwell Court Apartments.....	\$59,000.00
Less: Expense of sale.....	3,156.35
	<hr/>
Net selling price.....	\$55,843.65
Cost of Maxwell Court Apartments in 1945..	\$45,000.00
Less depreciation allowed thereon:	
Year 1946	\$1,246.00
Year 1947	830.00 2,076.00
	<hr/>
Adjusted cost basis.....	42,924.00
	<hr/>
Profit on sale.....	\$12,919.65
Long-term capital gain—taxable 50 percent.....	\$ 6,459.83
Long-term capital gain from sale of Maxwell Court Apartments shown in statutory notice of deficiency....	4,578.07
	<hr/>
Long-term capital gain increased.....	\$ 1,881.76
	<hr/>
Computation of Tax	
Net income as adjusted.....	\$15,575.31
Less: Exemptions	3,000.00
	<hr/>
Income subject to normal tax and surtax.....	\$12,575.31
Tentative normal tax and surtax on \$12,575.31.....	\$ 3,647.38
Less: 5% of \$3,647.38.....	182.37
	<hr/>
Correct income tax liability.....	\$ 3,465.01
Income tax liability disclosed by return.....	1,415.33
	<hr/>
Deficiency in income tax.....	\$ 2,049.68

[Endorsed]: T.C.U.S. Filed August 11, 1953.

[Title of Tax Court and Causes 29044 and 35129.]

MOTION FOR RECONSIDERATION

Comes now the petitioner S. B. Tressler by his undersigned attorney and moves the Court to reconsider the Memorandum Findings of Fact and Opinion entered in the above consolidated causes dated March 31, 1953 and served upon counsel for petitioner on April 3, 1953, and for grounds of this motion says:

That petitioner believes that this Court in said opinion overlooked or failed to consider the following:

1. Full faith and credit was not accorded the Final Decree of divorce granted petitioner dated July 17, 1945 by the Second Judicial District Court of the State of Nevada dissolving the bonds of matrimony with Ada Z. Tressler.

2. That the temporary residence of the parties "to spend the winter in Florida" did not vest the State of Florida as the marital domicil of the parties, and in the absence of a direct attack upon said Final Decree of divorce though obtained upon constructive service of process, the Florida Courts and this Court must accord it Full Faith and Credit.

3. That the form of action commenced by Ada Tressler in March, 1945 although entitled "Bill for Alimony unconnected with divorce" was held by the Florida Court to be an action for support com-

menced and maintainable under Section 65.10 Fla. Stat. 1941 (See Petitioner's Exhibit No. 8).

4. That upon entry of the Final Decree of divorce in Nevada on July 17, 1945 the marital relationship ceased to exist also the duty to support the former wife likewise ceased, since no final decree of separation had theretofore been entered by the Florida court, only an interlocutory order had been entered and no personal service had been obtained upon the petitioner S. B. Tressler in the Florida proceeding and he did not at any time submit himself to the jurisdiction of the Florida court. (See Petitioner's Exhibit No. 3.)

5. That although the order of the Florida court allowing temporary support, costs and temporary attorney's fees was dated June 13, 1945 prior to the Final Decree of divorce entered July 17, 1945, the actual payment was by order dated January 7, 1946 entered subsequent to Final decree of divorce, consequently said payment to the former wife was actually made under order or decree of court and at a time when said Ada Tressler was not the wife of petitioner, consequently such payment was income to Ada Tressler and taxable to her and not to petitioner.

6. Upon entry of the Final Decree of divorce on July 17, 1945 by the Nevada Court after publication and mailing of notice to Ada Tressler, the right of the Florida court to order support paid to Ada Tressler as the wife of S. B. Tressler ceased.

7. After entry of the Final Decree of divorce by the Nevada Court based upon constructive service

of process, the marriage relationship was terminated July 17, 1945 and thereafter Ada Tressler in the absence of a direct attack upon said divorce decree was limited to an action for the allowance of permanent alimony under Section 65.08 Fla. Stat. 1941, and any such action for the imposition of a Final Decree awarding alimony against S. B. Tressler her former husband to be enforceable against him, would have to be entered in an action where personal service of process was first had and obtained. No such character of jurisdiction was ever held by the Florida court over S. B. Tressler, the award of temporary alimony entered after entry of the final decree of divorce was invalid. Upon being apprised of the entry of the final decree of divorce the Florida court should have terminated the action of Ada Tressler for support, and she be required to attack the validity of the Nevada divorce decree in the proper forum, or commence a separate action against her former husband to adjudicate her rights to permanent alimony, if any.

Gaylord vs. Gaylord, .. Fla. . . , 45 So. 2d. 507,
509-510,

Pawley vs. Pawley, .. Fla. . . , 46 So. 2d. 464,
474-475,

Standish vs. Standish, 40 N.Y.S. 2d. 538, 179
Misc. 564.

8. That any and all payments of "temporary alimony" suit money and attorneys fees made to Ada Tressler in 1946 and 1947 were made under Order or decree of court entered after termination of marriage and in legal effect constituted income

to her from her former husband, taxable to her and not to petitioner.

9. The case at bar is distinguishable from *Estin vs. Estin*, (1948) 334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561; *Kreiger vs. Kreiger*, (1948) 334 U.S. 555, 68 S.Ct. 1221, 92 L.Ed. 1572; and *Rice vs. Rice*, (1949) 336 U.S. 674, 69 S.Ct. 751, 93 L.Ed. 958; in that in each of the cited cases final decrees of separation from bed and board and permanent alimony awards had been made. In the instant case only an action for support was pending when the Nevada final decree of divorce was entered. The provisions of the interlocutory order of June 13, 1945 were only enforceable, if at all, up to July 17, 1945 when the final decree of divorce was entered and which decree remains unimpeached.

10. That the refusal of the Florida court to allow Kenneth Tressler after entry of decree pro confesso, to plead the Nevada decree granted S. B. Tressler did not void or nullify the legal effect of said divorce decree when relied upon by S. B. Tressler. Its ground, extreme cruelty meets Florida law.

11. The refusal of the United States District Court to allow the relief sought by S. B. Tressler to rest his property from the State court and its Receiver did not adjudicate or hold invalid the Nevada divorce decree, and said District Court's Order dismissing said Bill of Complaint was appealed as error. (Pet. Exh. No. 3).

12. The petitioner's 1946 and 1947 income tax returns show that he remarried and claimed Pearl Ann Tressler as his wife and a dependent. The

rights of third parties having intervened and no direct attack having been made upon said Final Decree, this Court under Article 4, Section of the United States Constitution is required to give said decree Full Faith and Credit.

See *Pawley vs. Pawley*, .. Fla. ... , 46 S.2d. 464, 468-469.

13. Whatever the right of the Courts of a Sovereign State to weigh and consider the bonafides of the final divorce decree of a Sister State affecting the marital status of persons domiciled therein, petitioner respectfully submits that this Court, in the absence of a decree of a State or District Court invalidating the divorce, must accord to all such decrees Full Faith and Credit unless shown to be void upon the face of such divorce decree, therefore the Petitioners decree of divorce from Ada Tressler obtained in Nevada on July 17, 1945 terminated his marriage and also his duty to support her, any payments thereafter made to her under Court order or decree were taxable to her as income, and not taxable to petitioner.

14. In disallowing the attorneys fees paid by S. B. Tressler in the Florida litigation wherein his income producing properties were sequestrated, petitioner respectfully submits that this Court has overlooked or failed to consider that petitioner was held to be the owner thereof and Kenneth Tressler who endeavored to protect said properties was held to be petitioner's Trustee, consequently petitioner was in fact the real party in interest and such payments of attorneys fees were made upon petition-

er's behalf, and the bulk of such fees were earned after entry of the Nevada divorce decree and termination of the marriage and duty to provide support for his former wife Ada Tressler. Said fees were necessary in attempting to recover possession of said income producing properties and the income therefrom. Said expenses were incurred and should be allowed as a business expense. The petitioner did not claim any deduction for attorneys fees in obtaining his divorce, only to recover his income producing property.

15. That this Court overlooked or failed to consider that in the Florida proceedings the title to the Maxwell Court and Tarpon River Apartment properties were involved, the Courts decree dated January 7, 1946 divested Kenneth Tressler of title and impressed a trust thereon, the legal effect of which was to hold that petitioner because he purchased the property held title. In the event attorneys fees are not allowed as a direct business expense in recovering or attempting to recover the petitioner's income producing properties, certainly such fees should be allowed to be added to the total cost of said income producing properties, since said litigation did involve title.

16. In regard to the disallowance of the increased claim for deficiency for the year 1946 totalling \$3,020.00 petitioner believes that this Court failed to consider that the evidence showed that the cost of the Buildings and furnishings of the Tarpon River Apartments was \$15,675.00 and \$5,000.00 respectively, and those the Maxwell Apartments were

\$35,400.00 and \$6,000.00 respectively. Only 1,931.25 was claimed as deficiency for 1946. Applying the proper rates of depreciation against the furniture in rental units viz: 15% of \$11,000 the furniture alone was depreciable at the rate of \$1,650.00 per year. The buildings totalling \$51,075.00 depreciated over \$1500.00 per year. It is submitted that the claimed depreciation of \$3,020.00 as amended should be allowed. (See pages 2 and 3 of Findings of Fact and Opinion.)

17. That this Court overlooked or failed to consider that payments of alimony made after entry of final decree of divorce to the wife are taxable to her as income. Sec. 29.22 (k). Likewise payments made to her from a trust. An involuntary trust was created by the Florida court's receivership over petitioners property solely for the purpose of making payments to Ada Tressler and her attorneys. Said payments were made to the former wife Ada Tressler under Order or Decree dated January 7, 1946 long after the marriage had been terminated by Final decree of divorce. Since the marriage had been terminated, the payments made were not merely "interlocutory" but came long after entry of the Final Decree of divorce. Such payments were income to the former wife and deductible by the payee, since they were made by court order entered subsequent to final decree of divorce.

18. In the years 1946 and 1947 the petitioner was not under any obligation to provide support Ada Tressler as the wife of the petitioner, the final decree of divorce having been obtained on July 17,

1945. (Petitioners Exhibit No. 4.) All payments actually made by the Florida court to Ada Tressler out of the involuntary trust fund created by sequestering petitioners income producing properties, were made after the divorce and by order or decree of court. Such payments under Section 29.22 (k) are deductible by the former husband and taxable to the former wife.

For the reasons herein set forth petitioner respectfully moves the Court to grant this motion for reconsideration, and moves the Court to reconsider the Findings of Fact and Opinion heretofore entered herein.

/s/ JOSEPH A. FITZSIMMONS,
Attorney for Petitioner

[Endorsed]: T.C.U.S. Lodged May 5, 1953.

[Endorsed]: T.C.U.S. Denied May 6, 1953.

[Title of Tax Court and Cause No. 29044.]

MOTION TO VACATE OR REVISE DECISION

Comes now the Petitioner, S. B. Tressler, by his undersigned attorney, and respectfully moves The Tax Court of the United States to vacate or revise the Decision entered in the above styled cause on September 17, 1953 and assessing against the Petitioner a deficiency in income tax for the taxable year 1946 in amount of \$1,616.80, and for grounds hereof petitioner shows unto The Tax Court of the United States, as follows:

1. That said deficiency was predicated upon the sum of \$5,334.86 charged to petitioner as income for 1946, and paid under Order of the Circuit Court of Broward County, Florida through its Receiver, Ruth Westerberg, to Ada A. Tressler, the former wife of petitioner, and petitioner shows unto the Court that on January 7, 1946 when said Order was entered, he was not the husband of Ada A. Tressler, having been divorced from her by Final Decree of Divorce dated July 17, 1945 entered by the Second Judicial District Court of the State of Nevada. (Petitioner's Exhibit No. 4) and this Honorable Court has failed to accord Full Faith and Credit thereto, and petitioner respectfully shows unto the Court, that under Section 29.22 (k)-1 of the Income Tax Regulations, all payments made under an Order of Court, after a Final Decree of Divorce, to a former wife, are income to the former wife and taxable to her, and not to her former spouse; therefore the Decision entered entered herein should be vacated.

2. The Tax Court failed to consider that the petitioner S. B. Tressler had not ever been personally served with process or appeared in the Florida action commenced by Ada Tressler for separate maintenance under Section 65.10 Florida Statutes, 1941. (Petitioner's Exhibit No. 8, and No. 9) and consequently upon entry of the Final Decree of Divorce on July 17, 1945 by the Nevada Court, the obligation to support his former wife terminated. (Herrick vs. Herrick, 55 Nev. 59, 68, 25 P2d. 378, 380).

3. The Tax Court overlooked or failed to consider that only an order for temporary support or as misstated as "temporary alimony" had been entered in the Florida action brought by Ada Tressler and said Florida Court had not prior to July 17, 1945 when the Final Decree of divorce was granted to petitioner, entered any final decree whatsoever, and the divorce action having been concluded first, the duty and obligation to support ceased. (*Herrick vs. Herrick*, *supra*.)

4. The final decree of divorce entered on July 17, 1945 by the Nevada Court, although based upon constructive service by publication of the said Ada Tressler, nevertheless, was valid and terminated the marriage relationship. *Estin vs. Estin* (1948) 334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561; *Stewart vs. Stewart*, (1934) 115 Fla. 158, 155 So. 114, 115). Subsequent to the entry of the Final Decree of divorce on July 17, 1945, the Florida Court was without power to enter an order for temporary alimony, without first having determined the legality of the Nevada decree, after appropriate pleadings had been filed and proof taken. The Florida Court has at no time held the Final Decree dated July 17, 1945 entered by the Nevada Court in favor of the petitioner to be void, and the same stands unimpeached.

5. The Tax Court failed to consider that the petitioner S. B. Tressler was not a citizen of or domiciled in the State of Florida, and this Court held that he went to Florida only to spend the winter in 1945. (Memo. Opinion, Findings of Fact,

page 2.) The Florida Court did not have jurisdiction of the person of S. B. Tressler, and the parties to the marriage not having resided in Florida for ninety (90) days prior to suit commenced by Ada Tressler, the Florida Court did not have jurisdiction to grant a divorce or alimony unconnected with divorce. (Sec. 65.02 Florida Statutes, 1941). The parties were not bona fide residents of Florida, merely sojourning as tourists spending the winter in Florida.

6. Petitioner reaffirms all grounds of his Motion for Reconsideration filed herein on May 5, 1953 and Denied on May 6, 1953 and to which reference is prayed as though set forth herein and made a part hereof.

7. Petitioner having relied upon the Final Decree of divorce which he obtained in Nevada on July 17, 1945, remarried in Nevada and upon his 1946 income tax return claimed his wife, Pearl Ann Tressler, nee Pearl Ann Mounce, as a dependent, together with his step-children. The Respondent allowed these exemptions, yet seeks to charge petitioner with temporary alimony payments made to another 'wife' Ada Tressler. In 1946 Ada Tressler was his former wife, and petitioner was not under any valid legal or moral obligation to support his former wife Ada Zoeller Tressler.

8. In 1948 by the decision of *Estin vs. Estin*, 334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed. 1561, the doctrine of divisible divorce was sanctioned and the right of a State to enforce a prior final decree of separation coupled with payments of support, was upheld.

The law as it existed in 1946 and 1945 between the parties hereto was as stated in, *Thompson vs. Thompson*, (1913) 226 U.S. 551, 33 S.Ct. 129, 57 L.Ed. 347; *Atkins vs. Atkins*, (1944) 386 Ill. 345, 54 N.E.2d 488; *Herrick vs. Herrick*, 55 Nev. 59, 68, 25 P.2d 378, 380; and *Stewart vs. Stewart*, (1934) 115 Fla. 158, 155 So. 114, 115. Upon entry of a final decree of divorce, even based upon constructive service of process, it is entitled to full faith and credit, but can be attacked but so long as it remains unchallenged, said final decree constitutes a complete and perfect bar to the former wife's action for alimony. In 1950 Florida by the case of *Pawley vs. Pawley*, ... Fla. ..., 46 So.2d 464, 28 ALR 1358, cert. denied 340 U.S. 866, 71 S.Ct. 90, 95 L.Ed. 632, adopted the status of divisible divorce, and recognized the right of a wife who had been served by constructive process, to re-litigate the matter of property rights subsequent to entry of the divorce decree obtained in a foreign jurisdiction. The plaintiff wife was denied the right to maintain an action for alimony unconnected with divorce, where it appeared the husband had already obtained a valid decree of divorce upon the ground of desertion, but based on constructive service of process. The petitioner's divorce was upon the same ground and based on constructive service. Petitioner submits that all payments made to Ada Tressler after his divorce from her, were taxable to Ada Tressler and not to petitioner.

9. Petitioner respectfully shows unto the Tax Court that under the Order dated January 7, 1946

(Resp. Exh. "E") the property known as the Maxwell Court and Tarpon River Apartments was decreed to be held in trust by Kenneth Tressler. Since the property was held in trust and for the benefit of the former wife, Ada Tressler, then under Section 29.22 (k)-1, Internal Revenue Income Tax Regulations the periodic payments received by a former wife attributable to income producing property held in trust for her benefit are taxable to the former wife.

10. Petitioner respectfully submits that the expenditure by him of \$5,500.00 subsequent to obtaining his divorce in an effort to recover possession of his income producing properties, Maxwell Court and Tarpon River Apartments, was not expended in either a divorce or alimony action, but was made necessary by the action of the Florida Court in refusing to release this property from Receivership, although the purpose of its impounding was solely to provide support to Ada Tressler. The expenditure of said attorneys fees should be allowed to petitioner as a business expense in protecting his business property.

11. The decision as entered failed to allow petitioner depreciation in the sum of \$3,020.00 as claimed. Only the sum of \$1,931.25 was allowed. The evidence shows that the rental properties were furnished. The Maxwell Court furniture cost \$6,000 and the Tarpon \$5,000 making \$11,000 in furniture alone, which depreciates at the rate of 15% per annum or \$1,650.00. The buildings were valued at 35,400.00 and 15,675 respectively, for a total of

\$51,075.00 and depreciated at the rate of 3% per annum or \$1,532.25 making a total depreciation for 1946 of \$3,182.25. By amended pleadings \$3,020.00 was claimed. Petitioner respectfully submits the correct amount of depreciation should be allowed the petitioner, and the decision entered herein be vacated or revised.

12. The petitioner did not receive one cent of the revenue that the Receiver, Ruth Westerberg collected as rents from the two apartment buildings from March, 1945 to March 1947, and to charge him with income and tax him thereon, is contrary to all human understanding and cries out for relief. He was saddled with vexatious litigation which was costly to him, and brought about by a wife whom he has proven to the satisfaction of the Nevada Court had deserted him. They were married in August and separated the following March. He was required to expend his money for attorneys' fees to protect his property from being dissipated unlawfully. These expenses should have been allowed. He did not charge any attorneys' fees for obtaining his divorce, only to recover his property.

Wherefore, petitioner respectfully moves the Tax Court of the United States to vacate and set aside, or revise the Decision entered herein September 17, 1953. And your petitioner will ever pray.

/s/ JOSEPH A. FITZSIMMONS,
Attorney for Petitioner S. B.
Tressler.

[Endorsed]: T.C.U.S. Filed October 19, 1953.

[Title of Tax Court and Cause No. 35129.]

MOTION TO VACATE OR REVISE
DECISION

Comes now the Petitioner, S. B. Tressler, by his undersigned attorney, and respectfully moves The Tax Court of the United States to vacate or revise the Decision entered in the above styled cause on September 17, 1953, assessing against the petitioner a deficiency in income tax for the taxable year 1947, in amount of \$2,049.68, and for grounds hereof petitioner shows unto the Court:

1. This cause was tried as a companion case with Docket No. 29044 and a similar Motion to Vacate or revise the Decision rendered in said cause has been filed, and said Motion and the grounds therein set forth, are by reference made a part of this Motion as though set forth herein in extenso, and said Motion to Vacate is respectfully referred to, and requested to be considered in this cause.

2. The payment of \$984.69 to Ada Tressler as temporary alimony and \$193.00 as court costs, under the Final Decree dated July 16, 1947, and entered two years after the petitioner was divorced from Ada A. Tressler, should not be taxed against the petitioner, but to Ada A. Tressler, as payment of alimony or support under Court Order rendered subsequent to entry of the divorce decree. (Sec. 29.22 (k)-1, Income tax regulations.)

3. The sum of \$6,535.00 proven to have been spent by S. B. Tressler as attorneys fees, costs of court, printing transcripts and briefs, in the United States Circuit Court of Appeals, Fourth Circuit, and in The United States Supreme Court, should be allowed, for the reason said expenses were incurred in trying to shake his real property (business-income producing) loose from the clutches of the Florida Court, which continued to withhold it in Receivership although petitioner had been divorced from Ada A. Tressler in Nevada, on July 17, 1945. Petitioner, who was not a citizen or resident of the State of Florida would not submit his person to the jurisdiction of the Florida State Court, and was compelled to go into the United States District Court for the Southern District of Florida, as a non-resident, in order to try to rest his unlawfully withheld real property from the clutches of the Florida State Court. This was a business expenditure, and not a divorce or alimony action. This expenditure should be allowed. The District Court did not hold petitioner's Nevada divorce decree to be invalid, but dismissed his action because there was pending the State Court action, in other words the District Court instead of giving him the protection as a non-resident, that he was entitled to, said Court took the easiest way out, and like Pontius Pilate, merely washed its hands, and gave no relief, though the case cried out for relief. No necessity existed to withhold petitioners property to support Ada Tressler subsequent to July 17, 1945. He owed her no further

duty of support. The decision entered herein should be vacated and revised.

4. The Petitioner was entitled to an allowance for depreciation in 1947 as follows: On both apartments during January and February, 1947, and for the remaining six months, March 1, to August 31, 1947 on the Maxwell Court Apartments alone. The petitioner was entitled to have allowed to him depreciation in 1947 in amount of \$1,812.40 whereas he was only allowed \$830.00. Petitioner respectfully submits that the additional sum of \$982.40 should be allowed, and the Decision be revised and vacated. The computation of this depreciation for the tax year 1947 is as follows:

15% on all furniture for 2 months (\$11,000).....	\$ 276.00
15% on Maxwell Court furniture for 6 mos. (\$6,000)	450.00
3% on both buildings for 2 months (\$51,075.00)....	255.40
3% on Maxwell Court bldg. for 6 mos. (\$35,400.00)	831.00

Total 1947 depreciation to Aug. 31, 1947 sale date....\$1,812.40

5. In the alternative, if the large expenditures of \$6,535.00 for attorneys fees, printing and court costs, are not allowed in full, they should at least be allowed as a part of the cost of the real property, in that said expenditures were required to be made in establishing the state of the title, whether owned by petitioners' son, or held in trust as contended by Ada Tressler. She furnished no part of the purchase price, and sought to have the property title removed from Kenneth Tressler's name to that of S. B. Tressler so that she and her attorneys could subject it to depletion under the guise of providing her support. The expense should at least be

added to the cost of the land, however, in the interest of justice, the entire cost should be allowed as a necessary business expenditure made in protecting the business, income producing property of petitioner.

Wherefore, petitioner respectfully moves the Court to vacate the Decision entered herein on September 17, 1953 and revise the amount of the deficiency assessment, allowing petitioner the expenses and depreciation, and decreeing that the payments of \$984.69 made to Ada A. Tressler as temporary alimony in 1947 are taxable to the former wife and not to petitioner.

And your petitioner will ever pray:

/s/ JOSEPH A. FITZSIMMONS,
Attorney for petitioner,
S. B. Tressler.

[Endorsed]: T.C.U.S. Filed October 19, 1953.

[Title of Tax Court and Cause No. 29044.]

PETITION FOR REVIEW

Comes Now the Petitioner, S. B. Tressler, a resident of Reno, Nevada, by his undersigned attorney, and within 3 months from the filing of the Decision and Final Judgment of The Tax Court of the United States in the above styled cause, entered on September 17, 1953, and within 3 months from filing of Motion to Vacate or Revise said Decision

filed October 19, 1953, and denied October 26, 1953, does hereby petition for Review of said Decision by Appeal to the United States Court of Appeals for the Ninth Circuit, at San Francisco, California.

Nature of Controversy

The Tax Court of the United States by its Decision dated September 17, 1953, entered judgment against Petitioner for deficiency in income tax of \$1,616.80 for the taxable year 1946 pursuant to Memorandum, Findings of Fact and Opinion entered March 31, 1953, and Respondent's Computations for Entry of Decision under Rule 50 of the Tax Court. (This case was tried jointly with case No. 35129 involving a claimed income tax deficiency for the tax year 1947.)

Said deficiency judgment was entered by The Tax Court against Petitioner by reason of payment of \$5,334.86 under Order of a Florida Court dated January 7, 1946, by a Florida State Court Receiver to Ada A. Tressler, the former wife of Petitioner as annual support, Court costs and attorneys' fees. Petitioner, a resident of Nevada, was divorced from Ada A. Tressler, his wife, by Final Decree entered July 17, 1945, by the District Court of the Second Judicial District of the State of Nevada and said Final Decree has never been attacked in or vacated by the Nevada Court.

Point 1.

Petitioner contends that the Tax Court erred by failing to accord Full Faith and Credit to the

Nevada Divorce Decree and failed to recognize that Petitioner's lawful duty to provide support to his former wife, Ada A. Tressler, ceased on July 17, 1945, and that the payment of temporary alimony or support, attorneys' fees and Court costs made under Order of the Florida Court on January 7, 1946, subsequent to entry of the Divorce Decree rendered such payment by the Receiver taxable to Ada A. Tressler and not to the Petitioner.

Point 2.

The Tax Court erred in failing to allow Petitioner depreciation claimed by amended pleading of \$3,020.00 against the apartment buildings and furnishings only allowing \$1,931.25.

Point 3.

The Tax Court erred in failing to allow the sum of \$5,500.00 incurred by Petitioner in attempting to recover his income producing property from the Florida State Court Receivership wherein the legal title was attacked as being held in trust.

Petitioner being a resident of Reno, Nevada, and having filed his 1946 income tax return with the Collector of Internal Revenue at Reno, Nevada, on March 15, 1947, seeks Review by the United States Court of Appeals for the Ninth Circuit, San Francisco, California.

Wherefore, Petitioner feeling that grievous error has occurred upon entry of the Decision of The Tax Court of the United States against him in

this cause dated September 17, 1953, petitions for review thereof.

S. B. TRESSLER,

Petitioner,

/s/ By JOSEPH A. FITZSIMMONS,
Attorney for Petitioner.

State of Florida,
Broward County—ss.

Before me, the undersigned authority, personally appeared Joseph A. Fitzsimmons, who being well known to me and upon being first duly sworn, deposes and says: That he is attorney for the Petitioner, S. B. Tressler, that he is authorized to make this affidavit on behalf of said Petitioner; that he has read the foregoing Petition for Review, knows the contents thereof and avers that the same are true and further avers said Petition was not filed for purposes of delay.

/s/ JOSEPH A. FITZSIMMONS

Sworn to and subscribed before me this 16th day of December, A.D. 1953.

[Seal] /s/ JOHN W. BELL,
Notary Public, State of Florida at Large. My Commission expires October 14, 1955.

[Endorsed]: T.C.U.S. Filed December 17, 1953.

[Title of Tax Court and Cause No. 29044.]

AFFIDAVIT OF SERVICE

State of Florida,
Broward County—ss.

Before Me, the undersigned authority, personally appeared Joseph A. Fitzsimmons, who being well known to me and upon being first duly sworn, deposes and says: That he is attorney for S. B. Tressler, Petitioner; that he did on December 16, 1953, mail a copy of Petition for Review filed in the above styled cause to Honorable Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, Washington 25, D. C., together with copy of this Affidavit of Service.

/s/ JOSEPH A. FITZSIMMONS,

Sworn to and subscribed before me this 16th day of December, 1953.

[Seal] /s/ JOHN W. BELL,

Notary Public, State of Florida at Large. My commission expires: October 14, 1955.

[Endorsed]: T.C.U.S. Filed December 17, 1953.

[Title of Tax Court and Cause No. 35129.]

PETITION FOR REVIEW

Comes Now the Petitioner, S. B. Tressler, a resident of Reno, Nevada, by his undersigned attorney, and within 3 months from entry and filing of the Decision and Final Judgment of The Tax Court of the United States in the above styled cause, entered September 17, 1953, and within 3 months subsequent to the filing of a Motion to Vacate said Decision filed October 19, 1953, does hereby petition for Review of said Decision by appeal to the United States Court of Appeals for the Ninth Circuit at San Francisco, California.

By said Decision a Final Judgment in amount of \$2,049.68 was entered against Petitioner for deficiency assessment for the tax year 1947 for income taxes based upon Memorandum, Findings of Fact and Opinion entered March 31, 1953, and Respondent's Computation for Entry of Decision under Rule 50 of the Tax Court. (This case was tried jointly with case No. 29044 involving a claimed income tax deficiency for the tax year 1946.)

Nature of Controversy Point 1.

Petitioner, S. B. Tressler, is an individual, a resident of Reno, Nevada, and on July 17, 1945, obtained a Final Decree of Divorce in Reno, Nevada, from Ada A. Tressler, his former wife. By Order dated July 16, 1947, the Circuit Court of Broward

County, Florida, ordered its Receiver to pay to Ada A. Tressler \$984.69 as support and \$193.00 Court costs out of funds derived from rental property purchased by Petitioner and sequestered in March, 1945, but adjudged to have been held in trust by Kenneth Tressler, his son, and placed in receivership to pay support to Ada A. Tressler. Respondent charged said sum of \$1,177.69 paid Ada A. Tressler in 1947 as income to Petitioner and Respondent was sustained by The Tax Court. Petitioner avers error occurred in that Full Faith and Credit was not accorded to the Nevada Divorce Decree.

Point 2.

Respondent disallowed the sum of \$5,035.00 (increased to \$6,535.00 by amended pleadings) and as attorneys' fees and Court costs in the Florida State Court and Appellate litigation wherein a Receiver was appointed and the title to the income producing property was adjudged to be held by Kenneth Tressler as Trustee for Petitioner. The attorneys' fees and Court costs incurred subsequent to July 17, 1945, were in an effort to recapture possession of the Petitioner's income producing property from the Florida Courts Receiver. The Respondent disallowed this claimed deduction and refused also to include this expense of litigation involving title and possession as part of the cost of the property. The Tax Court sustained the Respondent. Petitioner avers error occurred.

Point 3.

Respondent only allowed depreciation of \$830.00 as against income, whereas the correct depreciation upon furniture and both apartments, while owned by Petitioner, amounted to \$1,812.40. The Tax Court sustained the Respondent. Petitioner avers that error occurred.

Petitioner, a resident of Nevada, filed his 1947 Income Tax Return on January 12, 1948, with the Collector of Internal Revenue at Reno, Nevada, and feeling that error has occurred seeks review on appeal to the United States Court of Appeals for the Ninth Circuit and petitions for Review in order to obtain a reversal of said Decision of The Tax Court of the United States entered against Petitioner on September 17, 1953.

S. B. TRESSLER,

/s/ By JOSEPH A. FITZSIMMONS,
Attorney for Petitioner.

State of Florida,
Broward County—ss.

Before Me, the undersigned authority, personally appeared Joseph A. Fitzsimmons, who being well known to me and upon being first duly sworn, deposes and says: That he is attorney for the Petitioner, S. B. Tressler; that he is authorized to make this affidavit on behalf of said Petitioner; that he has read the foregoing Petition for Review, knows the contents thereof and avers that the same are

true; and further avers that said Petition was not filed for purposes of delay.

/s/ JOSEPH A. FITZSIMMONS

Sworn to and subscribed before me this 16th day of December, 1953.

[Seal] /s/ JOHN W. BELL,

Notary Public, State of Florida at Large. My Commission expires: October 14, 1955.

[Endorsed]: T.C.U.S. Filed December 17, 1953.

[Title of Tax Court and Cause No. 35129.]

AFFIDAVIT OF SERVICE

State of Florida,
Broward County—ss.

Before Me, the undersigned authority, personally appeared Joseph A. Fitzsimmons, who being well known to me and upon being first duly sworn, deposes and says: That he is attorney for S. B. Tressler, Petitioner; that he did on December 16, 1953, mail a copy of Petition for Review filed in the above styled cause to Honorable Kenneth W. Gemmill, Acting Chief Counsel, Internal Revenue Service, Washington 25, D. C. together with copy of this Affidavit of Service.

/s/ J. A. FITZSIMMONS

Sworn to and subscribed before me this 16th day of December, 1953.

[Seal] /s/ JOHN W. BELL,
Notary Public, State of Florida at Large. My commission expires: October 14, 1955.

[Endorsed]: T.C.U.S. Filed December 17, 1953.

[Title of Tax Court and Causes.]

CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 25, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation of Contents of Record" except original exhibits, admitted in evidence, which are separately certified and forwarded herewith, as the original and complete record in the proceedings before The Tax Court of the United States in the above entitled proceedings and in which the petitioner in The Tax Court proceedings has initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand

and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 5th day of January, 1954.

[Seal] /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States.

[Endorsed]: No. 14205. United States Court of Appeals for the Ninth Circuit. *S. B. Tressler*, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petitions to Review Decisions of The Tax Court of the United States.

Filed: January 18, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for
the Ninth Circuit

Docket No. 14205

S. B. TRESSLER, Petitioner on Review,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

1. The Tax Court erred in failing to accord Full Faith and Credit or apply Rule of Comity to Petitioner's Nevada Final Decree of Divorce obtained July 17, 1945.

2. The Tax Court erred in failing to allow depreciation in applicable amount upon furnishings and Maxwell and Tarpon River apartment buildings.

3. The Tax Court erred in refusing to allow attorney's fees and expenses of litigation incurred by taxpayer in seeking recovery of his income producing property decreed to be held in trust and unlawfully withheld, from petitioner and his Trustee, in Florida State Court Receivership, solely to pay temporary support, attorney's fees and costs to his former wife, subsequent to his obtaining Final Decree of Divorce in Nevada.

/s/ JOSEPH A. FITZSIMMONS,

Attorney for Petitioner,

S. B. Tressler.

[Endorsed]: Filed January 28, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

PETITIONER'S DESIGNATION OF RECORD

1. Memorandum, Findings of Fact and Opinion.
2. Petitioner's Motion for Reconsideration.
3. Respondent's Computation for Entry of Decision.

4. Decision entered (No. 29044) Sept. 17, 1953.

5. Petitioner's Motion to Vacate or Revise Decision (No. 29044).

6. Petition for Review (No. 29044).

7. Affidavit of Proof of Service (No. 29044).

8. Decision entered (Nos. 35129, 29044) Sept. 17, 1953.

9. Petitioner's Motion to Vacate or Review Decision (No. 35129).

10. Petition for Review (No. 35129).

11. Affidavit of Proof of Service (No. 35129).

* * * * *

17. Order June 28, 1945 (Fla. Chan. 10760) allowing Temporary Support, Attorney's Fees and Expenses.

* * * * *

20. Respondent's Exhibit "A", Petitioner's 1946 Income Tax Return.

* * * * *

23. Testimony of S. B. Tressler, page 26 to and

including page 37, line 23. (Official Report of Proceedings before The Tax Court.)

* * * * *

34. Excerpt from Official Report of Proceedings before the Tax Court relating to Section 65.10, Florida Statutes Annotated (1941) page 50 commencing line 10 and ending page 51 with line 1.

35. Certificate of Clerk of the Tax Court.

36. Statement of Points to be relied upon on Review.

37. Copy of this Designation.

38. Affidavit of Service of Statement and Designation.

/s/ JOSEPH A. FITZSIMMONS,
Attorney for Petitioner,
S. B. Tressler

[Endorsed]: Filed January 28, 1954. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION RE PRINTED RECORD

It is hereby stipulated and agreed subject to the approval of this Court, (1) that Petitioner's Exhibits numbered 1, 2, 4-11, 14-19, inclusive, and Respondent's Exhibits A, B, C, and E, originally designated by Petitioner for inclusion as parts of the printed record, shall be omitted as part of the printed record, since it appears that the printing thereof would render the printed record cumbersome and unnecessarily increase the costs of printing, and (2) that the parties hereto may refer to all the various exhibits on brief and in oral argument as though the same were part of the printed record.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General,
Counsel for Respondent.

/s/ JOSEPH A. FITZSIMMONS,
Counsel for Petitioner.

[Endorsed]: Filed March 5, 1954. Paul P. O'Brien, Clerk.